

**GOVERNMENT OF THE DISTRICT OF COLUMBIA**

**Department of Employment Services**

**Labor Standards Bureau**

**Office of Hearings and Adjudication  
COMPENSATION REVIEW BOARD**



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**CRB No. 07-122,**

**GLADYS E. WASHINGTON,**

**Claimant – Petitioner**

**v.**

**DISTRICT OF COLUMBIA PUBLIC SCHOOLS,**

**Employer-Respondent.**

Appeal from an Order on Remand of  
Chief Administrative Law Judge Terri Thompson Mallett  
AHD No. PBL 05- 018A, DCP No. LTDMOPS006086

Heather C. Leslie, Esq., for the Petitioner

Pamela L. Smith Esq., for the Respondent

Before LINDA F. JORY AND SHARMAN MONROE, *Administrative Appeals Judges* AND E. COOPER BROWN, *Chief Administrative Appeals Judge*.

LINDA F. JORY, *Administrative Appeals Judge*, on behalf of the Review Panel:

**DECISION AND REMAND ORDER**

**JURISDICTION**

Jurisdiction is conferred upon the Compensation Review Board pursuant to D.C. Official Code §1-623.28, 32-1521.01, 7 DCMR § 118, and the Department of Employment Services (DOES) Director's Directive, Administrative Policy Issuance 05-01 (February 5, 2005).<sup>1</sup>

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<sup>1</sup> Pursuant to Administrative Policy Issuance No. 05-01, dated February 5, 2005, the Director of the Department of Employment Services realigned the Office of Hearings and Adjudication to include, *inter alia*, establishment of the Compensation Review Board (CRB) in implementation of the District of Columbia Fiscal Year 2005 Budget Support Act of 2004, Title J, the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004, sec. 1102 (Oct. 1, 1994), *codified at* D.C. Code Ann. § 32-1521.01 (2005). In accordance with the Director's Policy Issuance, the CRB replaces the Office of the Director in providing administrative appellate review and disposition of workers' and disability compensation claims arising under the D.C. Workers' Compensation Act of 1979, as amended, D.C. Code Ann. §§ 32-1501 to 32-1545 (2005) and the D.C. Government Comprehensive

## BACKGROUND

This appeal follows the issuance of an Order on Remand from the Administrative Hearings Division (AHD) of the Office of Hearings and Adjudication (OHA) in the District of Columbia Department of Employment Services (DOES). In that Order, which was filed on May 23, 2007, the Administrative Law Judge (ALJ) dismissed Claimant-Petitioner's (Petitioner) Application for Formal Hearing (AFH) for lack of jurisdiction. Petitioner now seeks review of that Order pursuant to the District of Columbia Government Comprehensive Merit Personnel Act of 1978 (D.C. Official Code §1-623.1 (2001))(the Act) .

Specifically, Petitioner asserts the ALJ's May 23, 2007 Order which dismissed her AFH on the ground that AHD does not have jurisdiction since no written determination was issued by the Office of Risk Management is in error based on the current case precedent enunciated in *Patricia Tellish v. District of Columbia Public Schools*, CRB No. 07-001, AHD No. PBL 05-028A, DCP No. 007013 (February 16, 2007)(*Tellish*). Petitioner requests that the dismissal order be reversed and AHD be ordered to proceed with a Formal Hearing on the merits of Petitioner's claim.

Respondent has filed a response which continues to assert that the matter be remanded to DCP for such further action as may be appropriate under applicable provisions of the D.C. Comprehensive Merit Personnel Act.

## ANALYSIS

As an initial matter, the standard of review by the Compensation Review Board (CRB) and this Review Panel, as established by the Act and as contained in the governing regulations, is limited to making a determination as to whether the factual findings of the Compensation Order are based upon substantial evidence in the record, and whether the legal conclusions drawn from those facts are in accordance with applicable law. D.C. Official Code §§ 1-633.28(a) and 32-1521.01 (d)(2)(A). "Substantial evidence," as defined by the District of Columbia Court of Appeals, is such evidence as a reasonable person might accept to support a particular conclusion. *Marriott Int'l. v. District of Columbia Department of Employment Services*, 834 A.2d 882 (D.C. App. 2003). Consistent with this standard of review, the CRB and this Review Panel are constrained to uphold a Compensation Order that is supported by substantial evidence, even if there is also contained within the record under review substantial evidence to support a contrary conclusion, and even where the reviewing authority might have reached a contrary conclusion. *Marriott*, 834 A.2d at 885.

Turning to the case under review herein, Petitioner asserts the ALJ erred by failing to comply with the Appellate Board's order in *Tellish* which Petitioner asserts AHD is bound to uphold and follow. Petitioner further asserts AHD does have jurisdiction to conduct a Formal Hearing in her

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Merit Personnel Act of 1978, as amended, D.C. Code Ann. §§ 1-623.1 to 1.643.7 (2005), including responsibility for administrative appeals filed prior to October 1, 2004, the effective date of the D.C. Workers' Compensation Administrative Reform and Anti-Fraud Amendment Act of 2004.

case as it is not contested that a letter of determination either accepting the claim or denying the claim had been issued within the 30 day time period prescribed by D.C.Official Code §1-623.24(a).

In support of her dismissal of the AFR, the ALJ relied on §1-623.24(b)(1) and opined that it is only if the injured worker is dissatisfied with the determination that the worker can request a hearing before an ALJ.

The ALJ repeated the language of §1-623.24(b)(1) and added, notwithstanding that the CRB had determined in *Tellish* that AHD does in fact have the necessary jurisdiction to hear Petitioner's Application for Formal Hearing,

The unambiguous language of this provision limits entitlement to a hearing to a claimant seeking compensation that is "not satisfied with a decision . . . under section (a). This provision does not extend a claimant's entitlement to a hearing to matters deemed accepted pursuant to subsection (a-3).

See Order at 2. The ALJ erred in refusing to follow the case precedent set forth by the CRB in *Tellish*. See *Robert Rovinski v. American Combustion Industries*, CRB No. 07-91, AHD No. OWC No. 576295 (June 5, 2007)(*Rovinski*)(The CRB has the ultimate responsibility within the agency for interpreting the statute the agency administers). The Panel concludes the ALJ erred in asserting that no statute authorizes the formal hearing process to commence prior to a written determination. In so concluding the Panel is not persuaded by the ALJ's more recent alternative argument that entitlement to a hearing is limited to injured workers "not satisfied with a decision" as this argument presupposes that an actual written decision must be issued before an injured worker may request a hearing.

While the Act contemplates a written determination prior to a formal hearing, the Act was recently amended, and those amendments provide that the failure of the Mayor, in this case meaning ORM, to make a written determination accepting or rejecting a claim within a specified 30 day period, results in the claim being "deemed accepted". D.C. Official Code §1-623.24(a-3)(1). In other words, the failure to issue a written decision within that period, or to send the required statutory notice of "extenuating circumstances", is a statutorily created exception to the requirement of an actual written determination. That is the meaning of the usage "deemed accepted"; it is a statutory instruction that the claim be treated *as if* a written determination has been made. Of course, there are complicating factors, such as the fact that the "deemed acceptance" means not only that the matter be treated "as if" a written determination has been issued, but also that it be treated "as if" that written determination was a written acceptance of the claim. The ramifications that such a written determination would have on a case and its outcome will depend upon the facts of the case, and are for the ALJ to decide in the first instance; however, to the extent that a written determination is needed to invoke AHD jurisdiction, the Act instructs, commands and requires that a failure to issue that decision or a notice of extenuating circumstances within the 30 day period be treated "as if" a written determination has been issued. See *Lewis v. District of Columbia Public Schools*, CRB No. 07-37, AHD No. PBL 03-039A, DCP No. 760005 (March 27, 2007)

In keeping with the CRB's decisions in *Tellish, supra* and *Lewis, supra*, the Panel concludes the dismissal of Petitioner's AFR is not in accordance with the law.

#### **CONCLUSION**

AHD has the necessary jurisdiction to hear Petitioner's Application for Formal Hearing.

#### **ORDER**

The Order of May 23, 2007 herein appealed is **VACATED** and this matter is remanded to AHD for further proceedings consistent with the foregoing Decision and Order.

FOR THE COMPENSATION REVIEW BOARD:

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LINDA F. JORY  
Administrative Appeals Judge

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August 9, 2007  
DATE

